



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,275	08/18/2005	Johannes Jung	3283-PAT	2960
30084 7590 09/15/2008				
DONN K. HARMS				
PATENT & TRADEMARK LAW CENTER				
SUITE 100				
12702 VIA CORTINA				
DEL MAR, CA 92014				
EXAMINER				
HOUSTON, ELIZABETH				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
09/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/528,275

**Applicant(s)**

JUNG, JOHANNES

**Examiner**

ELIZABETH HOUSTON

**Art Unit**

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-15, 18-20 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## DETAILED ACTION

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The terminology "one continuous longitudinal flange extending *uninterrupted*" is not found in the specification. The terminology "which are substantially *aligned* with each connector device" is not found in the specification.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13-15, 18-20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 states "one continuous longitudinal flange extending uninterrupted between said first and second end consisting of said connector devices and respective said spring devices upon each adjoining said wall segment which are substantially aligned with each connector device". Because the wording is awkward, it is unclear if the limitation of being "substantially aligned" refers to the wall segment or to the spring devices.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

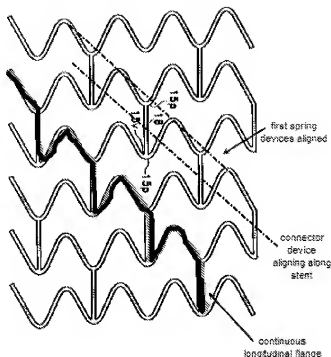
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13-15, 18-20 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogi et al (US 5,925,061), hereinafter referred to as Ogi.

6. Regarding claims 13 and 23, Ogi discloses the invention substantially as claimed including a stent defined by a plurality of adjacently positioned ring shaped elastic wall segments along a length of said stent between a first and second end, each wall segment having a radial elastic structure, said wall segments comprising spring devices (15,25) arranged in alternate fashion at an angle to each other; gaps separating said wall segments; connector devices in a communication across said gaps linking adjacently positioned spring devices upon each of said wall segments; said connector devices (18) aligning along said stent (see below) to form at least one continuous longitudinal flange (see below) extending uninterrupted between said first and second end consisting of said connector devices and respective said spring devices upon each adjoining wall segment which are substantially aligned with each said connector device communicating there between (the wall segments are aligned with the connector devices) and said continuous longitudinal flange thereby providing means to maintain said length of said stent under tensile or compressive stress (col. 5, lines 17-21); and said connector devices having a width or thickness, said width or thickness being larger than a respective width or thickness of adjoining said spring devices (Col 8, line 23-35).

Regarding claims 14 and 15, Ogi discloses that the wall segments have first and second spring devices arranged in alternate fashion at an angle to each other wherein the spring segments are substantially rectilinear (fig. 1). Ogi discloses that the continuous longitudinal flange is formed of connector devices connected between substantially aligned first spring devices or formed of connector devices connected between substantially aligned second spring devices (see below) Note: although the continuous longitudinal flange of the prior art contains additional structure not required by Applicant's invention, it must be noted that the prior art does disclose the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant.

Regarding claims 18-21, Ogi discloses that several longitudinal flanges are parallel to each other in a projection onto an external periphery area of said stent arranged in a direction of the periphery, at distances from each other. Regarding claim 24, Ogi discloses a unitary structure that is capable of being expanded with a balloon catheter (any stent is capable of balloon expansion, whether or not a balloon catheter is required to expand it). Regarding claim 25, Ogi discloses that the shape memory material of the stent is Nitinol (col. 6, lines 14-19). Regarding claim 26, Ogi discloses that the stent can also be made of a plastic (col. 6, lines 14-19). Regarding claim 27, Ogi discloses that the periphery is machined to a smooth or polished surface (col. 5, lines 62-65).



### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogi et al (US 5,925,061).

9. Ogi discloses that the connector devices have a larger width than the first and second spring devices, but fails to disclose that the connector devices are twice as wide as the spring devices ((Col 8, lines 23-35). Ogi does disclose a range of ratios varying

from the connectors being half the width of the spring devices up to the connectors being one and half times the width of the spring devices.

10. It would have been obvious to one having ordinary skill in the art at the time of the invention to increase the ratio of the width thickness of the connectors to the width of the spring devices since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range only involves routine skill in the art. *In re Aller* 105 USPQ 233.

#### ***Response to Arguments***

11. Applicant's arguments filed 06/25/08 have been fully considered but they are not persuasive. Applicant argues that Ogi does not disclose connectors that align with first or second spring devices to form a single uninterrupted flange. However, the claim limitations do not require that the flange form a straight line when the pieces are aligned or lined up nor do the claim limitations prevent the flange from changing direction along its path. Additionally, while the claims require that the connector devices aligned with each other, and the first spring devices or the second spring devices are aligned substantially with each other respectively, there is no limitation that requires that the connectors be aligned with either of the spring devices. Regarding the rejection under 103, applicant erroneously cites (C5:L45-C6:L13) as the support. Examiner directs applicant to the proper citation (C8:L23-35) that was included in this and the previous action.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ELIZABETH HOUSTON** whose telephone number is (571)272-7134. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. H./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731